IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

APPLICATION NO.216 OF 2007
IN
WRIT PETITION NO.894 OF 2007

Mr.Kishore M.Kothari ...Petitioner

Vs.

State of Maharashtra
and Ors. ...Respondents

...

Mr.R.J.Nodge i/b R.N.Kachave Advocate for Petitioner
Mr.A.S.Gadkari APP for State

...

CORAM: R.M.S.KHANDEPARKAR, AND SMT.V.K.TAHILRAMANI, JJ.

DATE : AUGUST 09, 2007

P.C.:

1. This is an application for restoration of Writ Petition No.894 of 2007 which was dismissed for default on 6th June, 2007. Application discloses that the Advocate for the Petitioner was not aware of the fact that the matter was kept for hearing on the day when it was dismissed and on account of the fact that the date of hearing was not noticed by the Advocate for the Petitioner he remained absent when the matter was called out. Considering this

fact, we would have been certainly inclined to allow the application and to restore the Writ Petition No.894 of 2007. However, perusal of the Writ Petition No.894 of 2007 discloses that the same is a petition seeking relief in the nature of writ of mandamus to the Respondent No.5 to admit the membership of the Navi Mumbai Retail Chemists and Welfare Association and further for directions to Respondent Nos.1 to 4 for enquiry of the Respondent No.5 and the said Association in relation to alleged violation of certain trade practices, as well as for directions to Respondent No.5 to pay damages to the Petitioner in respect of alleged mental agony and business loss to the Petitioner due to alleged negligence of the duty of the Respondents.

2. Apparently, petition is primarily for directions to Respondent No.5 to admit the Petitioner as member of the Association. The question of any writ to be issued to Respondent No.5 does not at all arise as the Respondent No.5 is not the ‘State’ within the meaning of Article 12 of the Constitution of India and therefore, no petition could be maintainable for issuance of writ

to the Respondent No.5.

3. As regards the grievance regarding the irregularities in trade practice and alleged mental agony and business loss to the Petitioner, certainly the matter would involve disputed questions of facts which would require proper adjudication before the appropriate forum and in that regard, alternate efficacious remedies are available to the Petitioner and hence, question of entertaining Writ Petition in that regard cannot arise.

4. For the reasons stated above, there is absolutely no case for entertaining the Writ Petition and for the same reason no purpose would be served by restoring the said Writ Petition by allowing the present application. In the circumstances, therefore, the application is rejected.

[R.M.S.KHANDEPARKAR, J.]

[SMT.V.K.TAHILRAMANI,J.]